IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3685 of 2002
WITH
CRIMINAL MISC.APPLICATION NO 3686 of 2002

For Approval and Signature: sd/-

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HIRBAI @ HANIFBEN W/O SANGAN BHAI HAJIBHAI

Versus

STATE OF GUJARAT

Appearance:
1. Criminal Misc.Application No. 3685 of 2002
Mr ND NANAVATI,for NANAVATY ADVOCATES for Petitioner No.1
Mr PR ABICHANDANI, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 27/06/2002

ORAL JUDGEMENT

1. Rule. Shri P.R.Abichandani, learned A.P.P. waives service of Rule in both matters.

2. Bail Application i.e. Criminal Misc. Application No.3686 of 2002 is filed by the present applicants accused who are father-in-law and brother-in-law of deceased Zarina. They are aged 75 and 24 years respectively. They are Muslims. Earlier Bail Application i.e. Criminal Miscellaneous Application No.1889 of 2002 filed by the same accused was withdrawn with liberty to file fresh bail application after receipt of "Visera Report". Visera Report shows that there was no poisoning. After receipt of the Visera Report (Annexure : C) the applicant - accused first approached the learned trial Judge by way of Criminal Miscellaneous Application No.78 of 2002 filed by the co-accused Hirbai @ Hanifaben, mother-in-law of deceased came to be dismissed by common judgment and order dated 3.6.2002 passed by the learned Addl. Sessions Judge, Morbi. Accused Hirbai @ Hanifaben filed above bail application before this Court i.e. Criminal miscellaneous Application No.3685 of 2002.

3. Learned Senior Advocate Shri N.D.Nanavati appearing for the applicant - accused in both Criminal Miscellaneous Application No.3685 & 3686 of 2002 firstly submitted that in this case there is no demand of dowry, still the petitioners are booked for the offences u/s.498-A, 306, 114 I.P.Code. He submits that in the instant case the allegation made against the accused is that all the accused were constantly torturing the deceased Zarina for not having any issue after marriage with Hasan, and because of the constant torture Zarina committed suicide by hanging herself in her in-laws house on 27.2.2002 at about 4.30 p.m. Complainant Karimbhai Dosabhai, father of deceased Zarina, lodged F.I.R. on 1.3.2002 at 6.45 p.m. i.e. after 2 days of the incident.

4. Learned Senior Advocate shri Nanavati taking me through the F.I.R. submitted that the conduct of the complainant is required to be closely scrutinized by this Court. He submits that the complainant going back quietly after seeing the dead body of deceased Zarina and lodging the complaint after 2 days of the incident, excluding Hasan, the husband of deceased Zarina is most suspecious. No doubt there is delay of 2 days in lodging F.I.R. but in such type of cases there is bound to be some delay and merely because there is delay of 2 days in lodging F.I.R. then on this very ground of delay this Court can not discard the prosecution case at this juncture. What poor father can do seeing dead body of his young married daughter, except quitely going back to

his home with abroken heart. It seems that as soon as he re-conciled he filed F.I.R. after two days without wasting further time. There is nothing wrong with his conduct.

5. There was no reason for the complainant to falsely involved aged mother-in-law, father -in-law and brother-in-law of deceased Zarina and not his son-in-law Hasan, husband of deceased Zarina. If at all undue advantage was to be taken then the complainant would have tried to involve almost all the family members of the accused, which he has not done it.

6. Shri Nanavati then submitted that in the instant case there was no immediate instigation to Zarina to commit suicide. I would not like to discuss the evidence in detail the statement of prosecution witnesses about the immediate instigation at this stage. However, having gone through the averments made in the F.I.R. and relevant statements of the prosecution witnesses prima facie I am of the considered opinion that there was immediate instigation, therefore, the case u/s.306 I.P.Code is made out against the accused.

7. It is true that Sanganbhai Hajibhai, accused applicant No.1 of Criminal Miscellaneous Application No.3686 of 2002 is aged 75 years old and Hirbai Hanifaben, mother - in - law of deceased Zarina is aged 65 years old. However, merely because they are old persons that would not be a ground for this Court to release them on bail when they are involved in such heinous offence. I am quite aware that Hirbai Hanifaben is a lady aged 65 years, but in the instant case both the father-in-law Sanganbhai and mother-in-law Hirbai @ Hanifaben were crazy for child, but Zarina was not able to deliver child, therefore, they started constantly taunting and torturing 'Zarina'. It is not in the hand of every woman to become mother. If she is not able to conceive for some or the other reason than that would not be a ground to torture her by her parents-in-law or brother-in-law. Perhaps demand of dowry can be satisfied but not such types of demand. In my considered opinion, it is worst to abuse or torture, a lady for not delivering child to such an extent that she commits suicide at an young age.

8. Shri Nanavati then submitted that the accused are belonging to minority community of Muslim and in this community there is hardly any inter connection with father-in-law and his daughter-in-law, therefore, it is difficult to believe that father-in-law was also

responsible for taunting his daughter-in-law deceased Zarina. We can not go by general impression. It is a matter of evidence and when the complainant along with witnesses have stated so about the torture meted out to deceased Zarina by the present applicant - accused father-in-law, mother-in-law and brother-in-law, then at this stage in absence of any contrary evidence it is difficult to take different view of the matter.

9. It is true that now the Visera Report is there which shows that there was no poison. However, in my considered opinion it would make hardly any difference in the matter. In the F.I.R. an averment is made by the complainant that his daughter had consumed poison but that statement was made by the complainant on the information given by Juma Suleman who had no first hand knowledge. Therefore, non finding of poison in Visera Report would not help the applicant - accused for releasing them on bail.

10. One more submission was made by Shri Nanavati for the applicant - accused Iqbal. He submitted that Iqbal is aged hardly 24 years. He is younger brother of Hasan, husband of deceased Zarina and he would not like to join in torturing or taunting Zarina on the ground that she is issueless. As stated earlier, this is a matter of evidence, therefore, no opinion can be expressed at this stage. At this stage Court has to go by the evidence on record, which is there in the form of statements of witnesses and complainant.

11. Before parting I must state that this type of bribe burning and suicide cases are increasing in our society. Almost everyday there are one or two matters of similar nature coming up for bail. If the courts do not take strict view of the matter then this may increase. In my considered opinion these are not the offences committed against individuals, but they are against the society at large.

12. Today, in the first sitting almost similar type of offence u/s.306, bail application was filed and dismissed by detailed order wherein judgments of the Supreme Court and this Court cited were duly considered, by this Court while rejecting that petition. For the reasons recorded in that bail petition i.e. Criminal Misc. Application No.3290 of 2002 both these Applications are also required to be dismissed.

13. In view of the above discussion both these Application fail and are hereby dismissed.

14. At this stage request is made by Shri Nanavati to expedite the trial as accused, father-in-law and mother-in-law are aged 75 and 65 years. The request is reasonable, therefore, granted. The learned Judge trying the case, is directed to expedite the trial as early as possible.

With these direction and observations, these petitions are dismissed. Rule discharged.

sd/-

Date : June 27, 2002 (B.J.Shethna, J.)

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